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IN THE

Supreme Court of the United States

October Term, 1953.
No. 371

In re LOS ANGELES COUNTY PIONEER SOCIETY, a Corporation, in Process of Voluntary Dissolution.

LOS ANGELES COUNTY PIONEER SOCIETY, *et al.*,
Appellants,

vs.

HISTORICAL SOCIETY OF SOUTHERN CALIFORNIA (a corporation), *et al.*,
Respondents,

THE PEOPLE, *et al.*,
Interveners and Respondents.

Reply of Respondent Historical Society of Southern California to Petition for Writ of Certiorari.

Petitioner, Los Angeles County Pioneer Society, an incorporated Society, initiated proceeding for voluntary dissolution and the distribution of its property among its members. The People of the State of California, by their Attorney General, with petitioner's consent, intervened by complaint alleging that petitioner is organized and exists for charitable and benevolent purposes—collection and

preservation of historical data relating to Los Angeles County and California,—that its property is dedicated to such purposes, that petitioner had abandoned the charitable trust and was proceeding to divert the trust property to the private use of its members, and that a new trustee is necessary, and praying for protection of the trust and for general relief.

The judgment, rendered on concurrent findings, sustained the allegations of the complaint, appointed Historical Society of Southern California successor trustee, and directed that the trust property (theretofore impounded) be turned over to it; it also ordered Pioneer to account for its trusteeship and to then proceed with the projected resolution.

The judgment was affirmed by the District Court of Appeal and by the Supreme Court of California, and rehearing was denied.[1]

Petitioner seeks certiorari to review the judgment.

The Rules of This Court Have Not Been Complied With.

Although the title in the official report includes *"The People, et al., Interveners and Respondents,"* and the judgment is predicated upon their complaint in intervention, they are omitted from the title to the petition.

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[1]The case is officially reported in 40 Cal. 2d 852.

Two of the seven justices dissented. On denial of petition for rehearing, one of the dissenters, in a separate opinion, used language which petitioner characterizes as a "stirring indictment." The "indictment" is one of a series of like manifestations emanating from the same source, critically reviewed in an article by Dean Pound in Volume 39, Number 9 (September, 1953) of the American Bar Association Journal, p. 794, entitled, *"Cacoethes Dissentiendi:* The Heated Judicial Dissent."

The petition contains numerous references such as:

"(Minute Book in Evidence)" p. 5;

"(Exhibit K)" p. 7;

"(R. Tr. 295)" p. 8;

"(Clks. Tr. 15)" p. 15, etc.

and is replete with other factual statements, without indication of the source.

No notice has been served of the filing with the Clerk of this Court of any certified or other copy of the record in the court below, or of any Clerk's or Reporter's transcript in the trial court, nor (if it has been so filed) has any copy of any record or transcript been served on this respondent.

Respondent Historical Society, believing that the Supreme Court's opinion correctly states the law, and that the petition shows lack of merit on its face, respectfully submits this reply thereto:

STATEMENT.

Petitioner Is a Charitable Corporation.

As long ago as 1921, petitioner was finally adjudged to be incorporated for public charitable purposes—*i. e.*, the collection and preservation of historical data relating to Los Angeles County and California.[2]

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[2]*Estate of Dol; Los Angeles County Pioneer Society v. Flint, et al., executors* (1921), 186 Cal. 64. In this case Pioneer was held to be a public charitable corporation, and that, therefore, a bequest to it by a will executed within thirty days of the death of the testator was void under Section 1313 of the Civil Code of California. The latter section forbids devises or bequests in trust for charitable uses, "except the same be done by will duly executed at least thirty days before the decease of the testator."

It is settled in California[3] and in other jurisdictions, including this Court,[4] that the decision in the case just cited precludes petitioner from relitigating the issue as to its charitable status. Respondents so contended herein; the Supreme Court, however, found it unnecessary to decide the question, because, from an elaborate and careful review of the extensive trial record, it concluded that "substantial evidence supports the determination of the trial court that Pioneer holds its assets for the charitable purposes expressed in its articles of incorporation," and that "Pioneer's course of conduct throughout these proceedings thus demonstrates that it has abused and abandoned its trust and amply supports the determination * * * that a new trustee should be appointed" (40 Cal. 2d 862); the *Dol* case was, therefore, given "the effect of *stare decisis* only" (40 Cal. 2d 860).

Petitioner's Property Is Dedicated to Its Public Charitable Purposes.

Petitioner acquired, by general gifts, bequests and devises, property, including real estate in the business section of the rapidly growing City of Los Angeles (Pet., p. 8; 40 Cal. 2d 860).

Petitioner's Colorable Procedures.

Its membership of 600 dwindled until, in 1948, it was reduced to 58 (Pet., p. 11).

As stated by the Supreme Court (40 Cal. 2d 861-862), commencing in 1948, Pioneer

> "amended its by-laws to close its membership and provide that existing members had a proprietary interest in its assets";

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[3]*Bernhard v. Bank of America* (1942), 19 Cal. 2d 807, 811, 813,
[4]*Stoll v. Gottlieb* (1938), 305 U. S. 165, 172-173.

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"brought a declaratory relief action to obtain a ruling that the assets were not held in trust, paying the attorney fees for both parties thereto";[5]

"reduced its property to cash";

"commenced dissolution proceedings";[6] and

"maintained in the trial court, in a petition for writs of prohibition and mandate, and on this appeal that its assets are not held for charitable purposes."

Intervention by the Attorney General.

The petition states (p. 14) that persons representing important interests and newspapers joined in persuading the Attorney General to intervene. At any rate, that official decided that his duty required him to, and he did intervene, seeking, on behalf of the State, judicial protection of the public trust and appointment of a successor trustee. (Pioneer's petition for certiorari overlooks the fact, stressed by the State Supreme Court, that Pioneer stipulated to the intervention (40 Cal. 2d 863).)

Pioneer's answer alleged that it had continued to carry out the charitable purposes, but denied the trust and persisted in its intention to dissolve and distribute the property to and for the private use of its members (40 Cal. 2d 859).

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[5]The only defendant in the action was one Pierce, a participating member. Notwithstanding the settled law of the State that the Attorney General is an indispensable party to such an action (*People v. Cogswell* (1896), 113 Cal. 129, 136), neither the State nor the Attorney General was made a party thereto; the facts were stipulated (40 Cal. 2d 857).

[6]Following the declaratory judgment "opposing" counsel in the declaratory relief action jointly instituted for Pioneer proceeding for its dissolution and represented it in all subsequent proceedings in the trial court. Pioneer has throughout persisted in its announced purpose to divert the assets to the private use of its members.

Findings and judgment were entered, Historical Society of Southern California was appointed and qualified as successor trustee, and Pioneer appealed, with the result heretofore stated.

ARGUMENT.

As heretofore shown, the State Supreme Court reviewed the facts and upheld the findings and judgment.

Pioneer's corporate powers and obligations, and the relations between the corporation and its members, are governed by the law of California.

That it is and has continued to be organized and to exist for public charitable and benevolent purposes, that its property consists of general gifts, bequests and devises dedicated to those purposes, that Pioneer had repudiated and abandoned the trust and was endeavoring to misappropriate the trust property are all issues of fact, determinable from the evidence. The issues have been so determined by the Attorney General, by the trial court, by the District Court of Appeal, and by the State Supreme Court.

It has been settled by numerous decisions that Writ of Certiorari is not available "to review the evidence or inferences drawn from it."

United States v. Johnston (1925), 268 U. S. 220, 227;

General Pictures Co. v. Electric Co. (1938), 304 U. S. 175, 178;

Alabama Power Co. v. Ickes (1938), 302 U. S. 464, 477.

Pioneer, ever since as early as 1948, has denied and repudiated the public trust and has persisted in the attempt to misappropriate the property dedicated to its charitable and benevolent purposes.

As said in *Irvine v. Dunham* (1884), 111 U. S. 327, 334: "No trustee can be more unsuitable that one who * * * denies the trust."

It is elementary that members of a charitable and benevolent corporation have no private proprietary interest in property dedicated to the corporation's charitable purposes. Also, that such members are not entitled to have charitable assets distributed to their private uses, either upon dissolution of the corporation or at any other time (40 Cal. 2d 863).

The Motion to Remand, made on the eve of the final argument in the Supreme Court, contains no suggestion that Pioneer's evil purposes have been abandoned—quite the contrary. It is equivocal, and does not recant its denial and repudiation of the trust.

Conclusion.

It is respectfully submitted that the judgment infringes no right, title or interest of petitioner or of any of its members; that it impairs no contract, and deprives no one of property without due process; that, therefore, no ground for Writ of Certiorari is presented and the petition should be denied.

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